Buchi, 72 N. J. Eq. 492 (right to lay oil pipes); *cf. Davis* v. *Tway,* 16 Ariz. 566; or "a license coupled with a grant," *Penman* v. *Jones,* 100 Atl. 1043 (right to dig and remove coal); *cf. Caldwell* v. *Fulton,* 31 Pa. 475; or "coupled with an interest," *Ingalls* v. *St. Paul etc. Ry.,* 39 Minn. 479 (to enter and remove chattels). For an exhaustive discussion of the confusion in terms and faulty analysis in easement and license cases see 27 YALE L. JOUR. 66. See also 7 COL. L. REV. 536; 14 MICH. L. REV. 259; 7 MICH. L. REV. 605; 13 MICH. L. REV. 401.

EVIDENCE—INTOXICATING LIQUORS—ADMISSIBILITY OF UNPROVED NOTE.—In a prosecution under the Alabama prohibition law, the state was allowed to show that officers found the following note on top of some cases of beer in the possession of the defendant: "Frank, please put this in the lounge and make Elvira burn the boxes and go to sleep and don't talk. B." The name of the defendent was Ben. *Held,* the note was improperly admitted in evidence, since there was no proof that it was written or authorized by the defendant. *Ex parte Edmunds,* (Ala., 1919) 89 So. 93.

The rule followed in the principal case has the approval of text writers and courts. 3 WIGMORE, EV., § 2130; 1 GREENLEAF, EV. [16th ed.], 680; *Stamper* v. *Griffin,* 20 Ga. 312; *Langford* v. *State,* 9 Tex. App. 283; *State* v. *Grant,* 74 Mo. 33. If there had been proof of the handwriting of the note it would presumably have been admissible. *Burton* v. *State,* 107 Ala. 108. Such evidence would, if proved, be admissible irrespective of the method by which it was obtained. *People* v. *Trine,* 164 Mich. 1. A distinction is made in the principal case and elsewhere between papers and other property seized, (*State* v. *Krinski,* 78 Vt. 162), the theory being that the writing without proof of identity is legally non-existent. *Stamper* v. *Griffin, supra.* Courts do not always observe this distinction. In a recent Alabama case the state was allowed to prove by parol evidence the contents of an unproved writing similar to the one in the principal case. *Johnson* v. *State,* 78 So. 716. It was said in *Sigfried* v. *Levan,* 6 Serg. & R. (Pa.) 308, 312, "* * * if there be any fact or circumstance tending to prove the execution, or from which the execution might be presumed, then like other presumptive evidence, it is open for the decision of the jury." It is submitted that a fair construction of the circumstances would make the note a part of the whole transaction and presumptively part of the instructions given by the defendant to his confederate.

GIFTS—ORDER IN BANK BOOK NOT EVIDENCE OF GIFT OF BANK DEPOSIT—NO DELIVERY SHOWN.—R sold land to H, agreeing to take in part payment thereof a deposit in a bank, and requested the purchaser to make the account payable to himself or M or the survivor of either of them. H executed the order and delivered the book and order to R or to R and M, by placing it on a table in their presence. M was later seen with the book but shortly afterwards it was returned to R in whose possession it remained until his death. In an action by R's executors against the bank and the alleged donee, *held,* no valid gift *inter vivos* to M was created since there was neither a sufficient showing of R's donative intent nor a valid delivery. *Rice et al* v. *The Bennington County Savings Bank et al,* (Vt., 1920) 108 Atl. 708.

To effect a valid gift *inter vivos* of money on deposit the same elements are required which are necessary for an effective donation of any other personal property, namely, a donative intent coupled with a valid delivery of some sort. *Dougherty* v. *Moore,* 71 Md. 248; *Bailey* v. *New Bedford Institute,* 192 Mass. 56. Delivery of a bank book coupled with the necessary intent is sufficient. *Camp's Appeal,* 36 Conn. 88; *Hill* v. *Stevenson,* 63 Me. 364. Where the book has been mislaid, a signed order to pay the amount of the deposit to the donee, delivered to him, has also been held to constitute a valid delivery. *Candee* v. *Connecticut Savings Bank,* 81 Conn. 372. When, however, an attempt is made to establish a gift whether neither of these modes of delivery has been made use of, a conflict arises. The situation in the principal case was of this sort and the majority holding followed the rule advocated chiefly by Maryland that the delivery of the pass-book itself or its equivalent is necessary. *Whalen* v. *Milholland,* 89 Md. 199; *Colmary* v. *Fanning,* 124 Md. 548; *Dougherty* v. *Moore, supra.* Other cases from which the court purported to derive support are: *McCollough* v. *Forrest,* 84 N. J. Eq. 101; *Taylor* v. *Corriell,* 66 N. J. Eq. 262; *Schippers* v. *Kempkes,* 67 Atl. 74; *Denigan* v. *San Francisco Savings Bank,* 127 Cal. 142. All of these are distinguishable from the principal case and the Maryland cases on the ground that additional facts were present which tended to negative the donative intent. The dissenting opinion in the principal case adopted what appears to be a less technical minority rule that the contractual arrangement with the bank, whereby the account was made payable to either or the survivor, created a joint ownership and was of itself a sufficient delivery without a subsequent manual handing-over of either the book or the order. *Dunn* v. *Houghton,* 51 Atl. 71; *Dennin* v. *Hilton,* 50 Atl. 600; *Marston* v. *The Industrial Trust Co.,* 107 Atl. 88; *Buckingham's Appeal,* 60 Conn. 143; *Erwin* v. *Felter,* 283 Ill. 36; *Whitehead* v. *Smith,* 19 R. I. 135; *Blick* v. *Cockins,* 252 Pa. 56; *Negaunee Nat'l. Bank* v. *LeBeau,* 195 Mich. 502; *Kennedy* v. *MacMurray,* 169 Cal. 287. In most of these cases the donor and donee went to the bank together and made the arrangement whereby the deposit was put in their joint names. The intent in the principal case is by no means so clear, but the court foregoes the possibility of making a distinction on this ground and considers that such an arrangement can at best be nothing but evidence of an intent and that mere intent is not delivery. The argument which seems to make the strongest appeal to those adopting the majority view, is that the donor who retains the bank book may draw out all the funds and thus make the alleged gifts a nullity. *Whalen* v. *Milholland, supra.* The minority view counters with the argument that the fact that the donor may indirectly defeat the gift by withdrawing the account does not of itself show that there was no valid delivery since the donee also has the power to withdraw the deposit as joint owner. *Raftery* v. *Reilly,* 107 Atl. 711; *Industrial Trust Co.* v. *Scanlon,* 26 R. I. 228. Clearly, it is not inconsistent with the creation of a joint ownership that the donor as one of the joint owners should retain the bank book. *Marston* v. *The Industrial Trust Co., supra.* In spite of the logic and attempted logic advanced by both sides it seems evident that the real conflict is between an unwillingness to abandon the ancient technical theory of a

delivery upon the one side, as opposed to the more liberal view that the clear intention of the parties should not be defeated by technical considerations. For additional discussion see 12 RULING CASE LAW 946, 22 HARV. L. REV. 453, and 15 HARV. L. REV. 751.

HIGHWAYS—COASTING TRAVELER.—In an action for damages for personal injuries resulting from a collision on a public road between defendant's carriage and a sled upon which plaintiff was coasting for pleasure, it was *held* that each party had equal rights as travelers, and that coasting was not such an act as to amount to a public nuisance, and consequently no bar to recovery. *Roennau* v. *Whitson,* (Ia., 1920), 175 N. W. 849.

In some jurisdictions coasting on city streets is deemed a public nuisance *per se* (*Wilmington* v. *Vandegrift,* 1 Marv. 5; *Reusch* v. *Licking Rolling Mill Co.,* 118 Ky. 369); while a statement to the contrary is found in *Jackson* v. *Castle,* 80 Me. 119. But even by such courts as the latter it is asserted, *obiter,* that under some circumstances coasting coupled with boisterous conduct may constitute a nuisance. Even the principal case does not go so far as to deny that proposition. Many of the cases on this subject are suits against municipalities by persons injured by coasters, where the municipality had, by ordinance, forbidden coasting (*Faulkner* v. *City of Aurora,* 85 Ind. 130), or where it had expressly given permission for such use (*Burford* v. *Grand Rapids,* 53 Mich. 98), in both cases a recovery being denied. Consciously or unconsciously, the courts are influenced by two considerations, viz., the means of locomotion and the purpose of the use, in this problem of determining who is a traveler. For instance, in *McCarthy* v. *Portland,* 67 Me. 167, the court says by way of *dictum* that a boy might be a traveler if he coasts on his way to school, but not if he does so for pastime, but it is submitted that the fact was there lost sight of that highways are properly intended and used for purposes of pleasure as well as of business. Where the injured party's play involved travel over the highway, a recovery was allowed in *Reed* v. *Madison,* 83 Wis. 371, and in *Beaudin* v. *Bay City,* 136 Mich. 333; and in *Gulline* v. *Lowell,* 144 Mass. 491, we find the same result even though the injured party was, at the moment of injury, engaged in a sport not connected with travel. Compare with this last case *Blodgett* v. *Boston,* 8 Allen (Mass.) 237, and *Tighe* v. *Lowell,* 119 Mass. 472. On all fours with the case at hand is *Lynch* v. *Public Service Ry. Co.,* 82 N. J. L. 712, 42 L. R. A. (N.S.) 865, note. See also the note in 4 Ann. Cas. 248.

MASTER AND SERVANT—LIABILITY OF OWNER FOR INJURIES TO AN INVITEE OF HIS CHAUFFEUR.—Defendant sent his chauffeur on an errand with his car. Contrary to instructions the chauffeur invited plaintiff's intestate to ride with him. The car was overturned and both were killed. In an action to recover for death of intestate, *held,* defendant was not liable, as chauffeur acted outside of his authority in inviting deceased to ride. *Rolfe* v. *Hewitt* (N. Y., 1920), 125 N. E. 804.

Some difficulty was experienced in reaching the decision in this case. The plaintiff recovered in the trial court, and a divided court affirmed the